HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

M.C.C. No. 136 of 2004

APPLICANT APPELLANT

Krishna Kumar Tiwari, S/o Late Rameshwar Pujari, age 34 years, Occupation-Agriculture, r/o Village Ramanujganj, Tahsil Pal, District Surguja (C.G.)

Versus

NON-APPLICANTS RESPONDENTS NO.1&2

1. Bharat Prasad Tiwari @ Lallu Babu S/o Late Rameshwar Pujari, age 42 years, Occupation-Agriculture.

2. Vidyavati Devi W/o Shri Bharat Prasad Tiwari @ Lallu Babu, age 37 years.

Both r/o Village Ramanujganj, Tehsil Pal, District Surguja (C.G.)

Application Under Order XXXIX Rule 2 A of the Code of Civil Procedure.

Present :

Shri Prafull Bharat and Shri A.K. Prasad, counsel for the applicant/appellant/plaintiff.

Shri Anoop Majumdar, counsel for the respondents/defendants.

ORAL ORDER

(Passed on 12th December, 2007)

Heard on application Under Order 39 Rule 2-A of the Code of Civil Procedure (hereinafter "the Code").

2. It is not in dispute that the unsuccessful applicant/plaintiff in Civil Suit No.37-A/1987 had preferred First Appeal No.18/2000 in the High Court on 25-11-2000. The said appeal came up for hearing for the first time on 08-12-2000. No interim order was passed on the said day. On 13-02-2001, an application was filed by the appellant/plaintiff under Order 39 Rule 1 and 2 of the Code for grant of stay in which it was prayed that the respondents/defendants be restrained not only from alienating/transferring the suit land to any other person during pendency of the appeal but also to maintain status-quo in relation to

the existing condition of the suit land. On 01-08-2001, the following order was passed by the High Court in the order sheet:

> "Mr. Sunil Sinha, for the appellant.
> Mr. P. Diwakar, for the respondent.
> As prayed list the case after two weeks.
> Meanwhile, the parties shall maintain status-quo as is existing today.
> C.C."

3. A perusal of record of First Appeal No.18/2000 also shows that the respondents/plaintiffs have made two applications on 29-07-2003 for vacating stay/status-quo order dated 01-08-2001 and also on 8-10-2004 for modification of the order dated 01-08-2001 on the ground that the structure being a highly dilapidated structure needed minor repairs and thefts were taking place.

4. The respondents/defendants filed reply to the application under Order 39 Rule 2-A of the Code and submitted that the status-quo ordered by the Court on 01-08-2001 was vague because it did not specify as to in what manner and in relation to what property was the status-quo ordered. Shri Anoop Majumdar, learned counsel for the respondents/defendants also submitted that if any repairing work has been undertaken by the respondent/defendants for up-keeping the property and preventing the same from being demolished, the respondents/defendants have tendered an unconditional apology.

5. Shri Prafull Bharat, learned counsel for the appellant has placed reliance on **P.G. Patra vs. Puran Foods and another (2003) 1 SCC 607** and **Kedarnath Gupta vs. Rambaligupta & another 2006 (1) C.G.L.J.298.** Shri Anoop Majumdar, learned counsel for the respondents/defendants on the other hand placed reliance on **M/s Bharat Coking Coal Ltd. vs. State of Bihar and others AIR 1988 SC 127.**

6. Having considered the rival submissions I have perused the record. It is pertinent to note that the order dated 01-08-2001 does not show that the ~~order~~ was passed on any application or request by

parties much less on an application for grant of injunction under Order 39 Rule 1 & 2 of the Code filed by the appellant/plaintiff. It also does not specify the subject matter in regard to which the parties were required to maintain status-quo. There is no material to show as to what was the status-quo prevalent on the date of the order. I have also perused the application filed by the respondents/defendants on 29-07-2003 for vacating stay and on 08-10-2004 for modification of the said order. An order of injunction is a *sine qua non* for proceeding under Order 39 Rule 2-A of the Code. There being no specific injunction granted by this Court on 01-08-2001 the question of disobedience thereof would not arise. I am therefore, not inclined to proceed under Order 39 Rule 2-A of the Code against the non-applicant.

7. Shri Prafull Bharat, learned counsel for the appellant/plaintiff has not disputed that the respondents/defendants have, after service of notice on M.C.C. 136/2004 not made any construction whatsoever over the suit premises. Shri Anoop Majumdar, learned counsel for the respondents/defendants also undertakes that the respondents/defendants shall not raise any construction whatsoever on the suit premises without the permission of the Court and shall not in any manner alter the nature of construction existing on the suit land.

8. In view of the above, application under Order 39 Rule 2-A of the Code is dismissed.

Sd/-
Dilip RaoSaheb Deshmukh
Judge

Kvr